Supreme Court, U.S.
FILED
071044 FEB 8 - 2008
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No. _____

In The
Supreme Court of the United States

LAJUANA DESTIN, and DENETRA MCELROY,
Petitioners,

v.

UNITED STATES OF AMERICA,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

I. WHETHER THE COURT SHOULD GRANT CERTIORARI TO SETTLE AN IMPORTANT QUESTION OF FEDERAL LAW THAT HAS BEEN DECIDED BY THE FIFTH CIRCUIT, BUT IS IN CONFLICT WITH PREVIOUS DECISIONS OF 1) THE SUPREME COURT, 2) CONSTITUTIONAL DUE PROCESS PROTECTIONS, AND 3) THE FEDERAL RULES OF EVIDENCE WITH REGARD TO IF OR UNDER WHAT CIRCUMSTANCES UNCORROBORATED, WITNESS OR ACCOMPLICE TESTIMONY SHOULD BE ADMISSIBLE FOR THE PURPOSE OF UPHOLDING A GUILTY VERDICT

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PRAYER

The petitioner, LAJUANA DESTIN, respectfully prays that a writ of certiorari be issued to review the judgment and opinion of the United States Court of Appeals for the Fifth Circuit issued November 13, 2007.

OPINIONS BELOW

On November 13, 2007, the United States Court of Appeals for the Fifth Circuit entered its opinion affirming the judgment of conviction and the sentence in this case. United States of America v. LaJuana Destin and Denetra McElroy, No. 06-20847 (5th Cir. November 13, 2007) (unpublished). A copy of that opinion is attached as Appendix A.

A copy of the judgment and sentence of the district court is attached as appendix B. The district court did not issue a written opinion.

BASIS OF FEDERAL JURISDICTION IN THE UNITED STATES DISTRICT COURT

This is a prosecution brought by the United States alleging a violation of 1) Section 371 of Title 18, United States Code, 2) Section 2 of Title 18, United States Code, and 3) Section 1341 of Title 18, United States Code.

On November 13, 2007, the United States Court of Appeals for the Fifth Circuit entered its opinion affirming the guilt of Petitioner and the sentence in this case.

Jurisdiction of the Court is invoked under Section 1254(1), Title 28, United States Code.

CONSTITUTIONAL PROVISIONS INVOLVED

The Fifth Amendment of the United States Constitution Provides:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

The Fourteenth Amendment of the United States Constitution Provides, in pertinent part:

> Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

(a) Course of Proceeding and Disposition of the Case Below

On December 29, 2004, Appellant LaJuana Destin (Steward[1]) and five co-defendants were named in a 44-count indictment, filed under seal in the United States District Court for the Southern District of Texas, Houston Division (R. 17- 33).[2] Destin was named in Count One, Count Forty-two, Count Forty-three, and Count Forty-four (R. 17-33). Count one of the indictment alleged conspiracy to commit mail fraud, which began on or about November of 1996 and continued until August 2001, in violation Title 18, United States Code, Section 371 (R. 17-33). Counts forty-two, forty-three, and forty-four alleged mail fraud, aiding and abetting, which began on or about November 1996 and continued until August 2001, in violation of Title 18, United States Code, Sections 1341 and 2 (R. 17-33).

On the morning of March 27, 2006, Destin appeared with counsel before the Honorable Melinda Harmon, United States District Judge for a bench trial (R. 214-1264). On Friday, March 31, 2006, closing arguments were made (R.214-1264). The Monday thereafter, April 3, 2006, the Honorable Melinda Harmon pronounced a verdict of guilty upon Destin (R.

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[1] Steward is Petitioner's married name.

[2] The record on appeal ("R") is cited as follows: "R x [page number]" as stamped by the United States Court of Appeals in the appellate record.

214-1264). Notice of Appeal was timely filed on behalf of Petitioner, LaJuana Destin on October 13, 2006, under FED. R. APP. 4(b)(2). On November 13, 2007, the Fifth Circuit Court of Appeals entered an opinion affirming the Judgment of the Federal Court that there was sufficient evidence to support the conviction of Petitioner, LaJuana Destin for conspiracy to commit mail fraud. (Appendix A: COA 5th Circuit Opinion, P. 13). The Court of Appeals further affirmed the opinion of the Federal Court that Petitioner, LaJuana Destin committed mail fraud. The Court stated that the evidence showed that Destin knowingly participated in a scheme to defraud the TWC for the purpose of obtaining unemployment benefits for herself and others who were otherwise ineligible. The Court cited as evidence, the sole uncorroborated testimony that Destin provided false information, including fictitious employer addresses, so that Slaughter could exploit a loophole in TWC's system. (Appendix A: COA 5th Circuit Opinion, P. 17). The Court further referenced a previous fifth circuit case during its opinion. See Burton v. United States, 237 F.3d 490, 498 (5th Cir. 2000) ("A guilty verdict may be sustained even if supported only by the uncorroborated testimony of a co-conspirator, and even if the witness is interested due to a plea bargain, unless the testimony is incredible on its face.") (Appendix A: COA 5th Circuit Opinion, P. 14). A review of the Court of Appeals judgment is sought, particularly in regards to uncorroborated testimony of a co-conspirator to be admissible. In this case, the Fifth Circuit accepted the statements of Slaughter, an alleged co-conspirator witness, with everything to gain, as he was awaiting sentencing due to his plea agreement.

In particular, the Supreme Court has recognized that a co-conspirator awaiting trial has a greater incentive to be dishonest in favor of the prosecution, especially if still awaiting his own sentencing. To think that criminals will lie to save their fellows, but not to obtain favors from the prosecution for themselves is indeed to clothe criminal class with more nobility than one might expect to find in the public at large. Washington v. Texas, 388 U.S. 14, 22-23 (1967). As in the case at hand, the Government relied on uncorroborated witness testimony of a defendant awaiting sentencing, with an incentive to be dishonest, and we urge the Supreme Court to review the Court of Appeals opinion regarding uncorroborated testimony being admissible and sufficient on its face to sustain a guilty verdict, and to rule that uncorroborated witness testimony is unreliable, particularly when a defendant has entered a plea agreement and is awaiting his own sentencing, and cannot sustain a guilty verdict.

(b) Statement of the Facts

This case involves payments of unemployment insurance benefits fraudulently paid by the Texas Workforce Commission ("TWC") as a result of misrepresentations entered into the online system by a long-time, trusted employee of the TWC, John Slaughter, a co-defendant named in all counts of the 44-count indictment (R. 17-33, R. 544, ln. 14-18). John Slaughter began his employment with the TWC in 1982 as a claims taker, who was authorized to enter data on the TWC's computer system to initiate and resolve claims (R. 539, ln. 15-16, R. 539, ln. 24-R. 540, ln. 5). After approximately 14 years of employment, Slaughter had learned the system so well that he knew

how to force eligibility of an otherwise ineligible claim (R. 545, 547). As a result, Slaughter would go into the system and input fraudulent information with the intent of overriding the ineligible status of certain claims (R. 545, 547). Slaughter would effectuate this scheme on his own by entering false information, which was unable to be verified by the claimant because Slaughter, not the claimant, entered the information into TWC's system and the notification sent through the mail did not indicate the last, or fictitious, employer of the claimant (R. 686, ln. 8-18), (R.685, ln. 11-18). Therefore, the claimant would not necessarily be aware that false information was entered into the system (R.689, ln. 2-8).

Slaughter utilized what was called "a fictitious employer" scheme throughout the trial (R. 544). Essentially, Slaughter was aware that initial eligibility for unemployment insurance benefits was predicated on whether a claimant had worked during the first four of the last five months, also referred to as the base wage earning period (R.685, ln. 11-18). This base wage earning was used to compute eligibility and the amount of payments for unemployment insurance claimants (R.685, ln. 11-18). Additionally, Slaughter understood that any employer entered into the online electronic system utilized by TWC would not be documented on outgoing paperwork sent to the claimant (R. 686, ln. 8-18). Similarly, any fictitious employer entered onto a fraudulent claim by John Slaughter would likewise be unaware of Slaughter's illicit and deceitful conduct (R.689, ln. 2-8). Therefore, the claimant, who had never been given the opportunity to authenticate the data entered into the computer by the claims taker, would not be aware if

the information was entered correctly. Consequently, under the auspices of helping people during the course of employment as a claims taker, John Slaughter manipulated the system in such a way to provide eligibility to people whom he thought to be deserving of the compensation regardless of their ineligible status based on proper TWC rules and guidelines. The Court seemed to place a lot of significance on the fact that Slaughter was Petitioner Destin's claims representative in 1996, when Petitioner Destin applied for employment benefits in 1996 and again in 1999 when she applied for employment benefits. However, it should also be noted that Petitioner Destin did not receive employment benefits in 1996 when TWC documents show that it was Slaughter she spoke to. (See Appendix B: Government's Argument on Appeal, P. 38-39). If this indicates anything, it indicates that Petitioner Destin was not involved in a criminal scheme and was not a co-conspirator. It should also be noted that Destin had no criminal history, which should give more credence to her testimony. (PSR 49).

In the end, the Government was relying on Slaughter's uncorroborated testimony.

REASON FOR GRANTING THE WRIT

As to the question presented, the Court should grant certiorari to settle an important question of federal law that has been decided by the Fifth Circuit Court of Appeals and other circuits, but is in conflict with the previous decisions of 1) the Supreme Court, 2) Constitutional due process protections guaranteed by the Fifth and Fourteenth amendments, and 3) the federal rules of evidence, with regard to if or under

what circumstances uncorroborated witness testimony should be admissible for the purpose of upholding a guilty verdict. In this case in particular, with regard to whether the evidence was sufficient beyond a reasonable doubt to convict Petitioner, LAJUANA DESTIN of conspiracy to commit mail fraud and mail fraud under 1) Section 371 of Title 18, United States Code 2) Section 2 of Title 18, United States Code, and 3) Section 1341 of Title 18, United States Code.

The presumption of innocence is a long and well-settled fundamental right. Coffin v. U.S., 156 U.S. 432, 453 (1895),(where the Supreme Court held "[t]he principle that there is a presumption of innocence in favor of the accused is the undoubted law, axiomatic and elementary, and its enforcement lies at the foundation of the administration of our criminal law."); see also Merrill v. United States, 338 F.2d 763, 768 (5th Cir. 1964)(where this Court ruled that "the presumption of innocence is one of the fundamentals of the law. It is not to be denied to any one accused of crime."). The presumption of innocence performs a two-fold function in our criminal process. U.S. v. Thaxton, 483 F.2d 1071 (5th Cir. 1973). First, it serves as a reminder that the burden of proof rests, in its entirety, on the government. Id. Second, it acts as a cautionary measure that the fact-finder should clear their mind and to reach a decision based solely on substantial evidence. Id.

The presumption of innocence is a fundamental principle of the criminal justice system that insures Due Process is served such that an accused is convicted only if the government is able to prove guilt beyond a reasonable doubt. Petitioner LaJuana Destin

contends that she was denied the standard of guilt beyond a reasonable doubt because the evidence presented by the government was insufficient to substantiate a guilty verdict beyond a reasonable doubt. Moreover, Petitioner argues that the uncorroborated testimony of a person, a co-defendant, with good reason to lie was given more weight than should have been assessed considering prior decisions by this Court that such testimony should not be used lightly against an accused.

The Supreme Court has recognized that accomplice agreements may encourage perjured testimony. Washington v. Texas, 388 U.S. 14, 22-23 (1967). Despite this realization, many courts have held that the terms of accomplice plea agreements merely affects the weight of the testimony, not its admissibility. United States v. Gomez, 810 F.2d 947, 956 (10th Cir.), cert. denied, 107 S. Ct. 2488 (1987). Thus far, the Supreme Court has not ruled in regards to weight of the evidence versus sufficiency of the evidence. We urge this Court to formulate a rule under what circumstances do accomplice plea agreements affect the admissibility of the witness's sole uncorroborated testimony.

Further, some Federal Circuit Courts of Appeals have allowed convictions based on uncorroborated testimony of accomplices to stand for the purpose of sustaining a guilty verdict, where the testimony is not "incredible or unsubstantial on its face." Haakinson v. United States, 238 F. 2d 775, 779 (8th Cir. 1956). In the case at hand, the Fifth Circuit cited in its opinion a similar rule. A guilty verdict may be sustained even if supported only by the uncorroborated witness

testimony of a co-conspirator, and even if the witness is interested due to a plea bargain, unless the testimony is incredible on its face. Burton v. United States, 237 F. 3d 490, 498 (5th Cir. 2000). (See A, P. 14).

The Federal Rules of Evidence further require the Court to weigh the probative value of the evidence against the "danger of unfair prejudice, confusion of issues or misleading the jury and considerations of undue delay, waste of time, or needless presentation of cumulative evidence. Fed. R. Evid. 403. The United States Constitution guarantees due process and the right to fair proceedings in Courts, both state and federal. The Fifth Circuit and other circuits willingness to allow sole uncorroborated witness testimony to uphold guilty verdicts is in conflict with 1) the United States Constitution and its requirement of due process and fair procedures, 2) the Federal Rules of evidence and there requirement of balancing the probative value of the evidence against the danger of unfair prejudice, and 3) it is in conflict with previous decisions of the Supreme Court. While the Supreme Court has never specifically made a determination that uncorroborated witness testimony is not admissible or that it is not sufficient to uphold a conviction, it has recognized that all accomplice testimony is inherently suspect. Bruton v. United States, 391 U.S. 123, 136 (1968). "The use of informers, accessories, accomplices, false friends, or any other betrayals which are "dirty business" may raise serious questions of credibility." Lee v. United States, 343 U.S. 747,757 (1952). The Supreme Court has recognized that accomplice testimony must be received with suspicion, and with the very greatest

care and caution, and ought not be passed upon. Crawford v. United States, 212 U.S. 183, 204 (1909). We urge this Court to formulate a rule that does not allow sole uncorroborated witness and/or alleged accomplice testimony to be admissible for the purpose of sustaining a guilty verdict. Rather, due process, the Federal Rules of Evidence, and precedent as stated by the Supreme Court demands that the law provide a guilty verdict may not be sustained, if supported only by the uncorroborated witness testimony of a co-conspirator, especially if the witness has entered a plea bargain, and is awaiting sentencing. Rather, there should be other sufficient evidence necessarily required to uphold a guilty verdict, where there is only uncorroborated witness testimony, at the very least.

In the case at hand, the Fifth Circuit made the determination that Petitioner, LaJuana Destin was guilty of both mail fraud and conspiracy to commit mail fraud, based only on the testimony of John Slaughter, a Texas Workforce Commission employee, who pled guilty to one count of the indictment, despite being indicted on forty-four counts of mail fraud, aiding and abetting each other to commit mail fraud, and conspiracy to commit mail fraud. In effect the Court accepted everything that Slaughter stated as true, citing that "A guilty verdict may be sustained even if supported only by the uncorroborated testimony of a co-conspirator, and even if the witness is interested due to a plea bargain, unless the testimony is incredible on its face." Burton v. United States, 237 F.3d 490, 498 (5th Cir. 2000). See Appendix A, P. 14.

The essential elements the Government must prove beyond a reasonable doubt to show a violation of Title 18 of the United States Code, Section 371 are (1) an agreement to commit an offense against the United States or any agency thereof, (2) coupled with an overt act by any one or more of the conspirators to effectuate the conspiracy. United States v. Falcone, 311 U.S. 205 (1940); see also 18 U.S.C. § 371. The gist of a conspiracy is an agreement to commit an offense. Falcone at 210. Hence, without an agreement, no conspiracy transpires. Those having knowledge of the conspiracy are not necessarily conspirators. Id. citing to U.S. v. Hirsch, 100 U.S. 33, 34 (1879). Even so, an overt act is required of one or more of the conspirators to effectuate the object of the conspiracy. U.S. v. Sink, 586 F.2d 1041, 1050 (5th Cir. 1978).

For example, the Court appears to accept everything that the uncorroborated co-conspirator's (Slaughter) testimony states, as true. Yet it fails to take into account, the fact that Slaughter had a plea agreement in place and was awaiting sentencing. Slaughter testified that he first met Destin in the mid-1990s. He filed false claims on her behalf using fictitious employers in 1996 and 1999. As part of the 1999 claim, Slaughter used the fictitious employer "Destiny" to help Destin obtain benefits for which she was otherwise ineligible because she had resigned from her most recent employ. Slaughter believed that he added the "y" to the end of Destin's name because "it made it look more like an employer." Slaughter inputted a P.O. Box address for Destiny, the fictitious employer, that he was certain was provided to him by Destin. He stated that there was no question in his mind that Destin knew he was filing a false claim on

her behalf because she gave him the P.O. Box address that he used as her last employer's address. Slaughter told her to throw away any correspondence she received from TWC at that address. (Appendix A, P. 10).

On the other hand, the Court fails to take into account the fact that Petitioner testified that she first applied for unemployment benefits in 1996 with Gail Evans of TWC. In 1999, after she lost her job with a company called Imperial Holly, she again applied for unemployment benefits. She testified that when she went to apply at the TWC office, Slaughter was randomly assigned to take her claim. She then provided him with information that he input into the computer. She stated that she did not pay Slaughter $100 to help her apply for benefits. She also testified that she knew McClain, but did not know that he had filed for unemployment benefits. (Appendix A, P. 11).

The government put forth the testimony of John Slaughter to prove that Destin and Slaughter had an agreement to commit a crime. The Supreme Court has intimated that a cautionary practice should be utilized in allowing "too much reliance upon the testimony of accomplices" so much so that the Supreme Court suggests "corroborating testimony before giving credence to them." Holmgren v. United States, 217 U.S. 509, 523-34 (1910). The Fifth Circuit has adopted the practice of taking special precautions when basing the conviction of a defendant upon the sole uncorroborated testimony of a witness with good reason to lie. U.S. v. Garcia, 528 F.2d 580 (5th Cir. 1980). John Slaughter had good reason to lie. Unlike Petitioner Destin, the weight of the evidence was

sufficiently against him. The documentation presented at trial contained his user identification and that, admittedly, could not have been used by anyone else as his identification was password protected (R.612, ln. 8-18). The documentation by the TWC clearly and unambiguously showed that he, and he alone, changed the information, which he also admits (R.612, ln. 15-17). Nevertheless, it does not show that Destin entered or prompted the wrongful entering of information in any way. *See* (R.686, ln. 8-18)(where Slaughter admits he was the only one with computer access, had total control, and that claimants could not have verified the information); *see also* (R.689, ln. 2-8); *see also* (R.704, ln. 2-14)(where Slaughter describes that he failed to tell people whom he used as a fictitious employer that was doing anything illegal by using their address).

John Slaughter most definitively had reason to lie, which was why he entered into a plea bargain agreement with the government in exchange for his cooperation at trial, against Appellant Destin, because John Slaughter was the only defendant named in the 44-count indictment. (R. 17-33). Additionally, he understood that if found guilty, he could be sentenced up to five years for each count, or 220 years (R. 665, ln. 1-25). John Slaughter also came to learn that by cooperating with the government, 43 of those counts would be dismissed at the time of sentencing, such that he would only face up to five years, which is a large departure from what he would otherwise be subject (R. 533, ln. 24-R.535, ln. 23)(R.666, ln. 8-23). Moreover, Slaughter's plea bargain with the government allowed for a request for a 2 to 3 point downward departure from the United States

Sentencing Guidelines based on a 5K.1 motion from the government as part of the plea bargain (R. 533, ln. 24-R.535, ln. 23)(R.666, ln. 8-23). The result of this negotiating was that Slaughter was looking at far less time as long as he cooperated prior to sentencing (R. 533, ln. 24-R.535, ln. 23)(R.666, ln. 8-23). The trial of LaJuana Destin occurred prior to the sentencing of John Slaughter (R. 533, ln. 24-R.535, ln. 23).

As a result of Slaughter's good reasons to lie, the Court should have taken special precaution with the testimony. Id. at 587 (where Court held that the rationale behind special instructions to a jury is "to insure that no verdict based solely on the uncorroborated testimony of a witness who may have good reason to lie is too lightly reached."). Although this was a bench trial, the same special consideration should have been given to Appellant Destin to insure that John Slaughter, who had good reason to lie, was not lying for his own personal gain.

The Fifth Circuit has stated that a conspiracy conviction may be based on the uncorroborated testimony of an alleged co-conspirator may be sufficient when it is not be incredible or otherwise insubstantial on its face. U.S. v. Osum, 943 F.2d 1394, 1405 (5th Cir. 1991). While the Supreme Court has never specifically made a determination that uncorroborated witness testimony is not admissible or that it is not sufficient to uphold a conviction, it has recognized that all accomplice testimony is inherently suspect. Bruton v. United States, 391 U.S. 123, 136 (1968). In this case, Petitioner argues that the evidence presented by the co-conspirator, John Slaughter, who testified at trial against Appellant was

so insubstantial as to create a reasonable burden of doubt such that a conviction was rendered in violation of Appellant's constitutionally protected rights. After all, Slaughter admitted that it was he who changed the name of the last employer to a fictitious employer (R. 594, ln. 1-5)(R.627, ln. 21-R.628, ln. 1). Slaughter explaining, from a claims taker perspective, that Petitioner might receive a letter that was of no consequence and to just throw it in the trash is not indicative of criminal culpability[3], Slaughter never indicated why the letter should be destroyed, and Slaughter was the only person alleged to have input information in the TWC computer and information may be gathered in multiple ways. (R. 686, ln. 8-11); see also (R. 679, ln. 1-12) (where Slaughter told people not to worry about the letter and to "just throw it away"). As opposed to accepting Slaughter's possibly slanted testimony as true, there is a better explanation, and that is that when Petitioner gave Slaughter her letter of resignation from Imperial Sugar, the address was on that letter. This does not show that she was aware of anything.

The government only managed to prove Slaughter's guilt through his testimony, not the guilt of Petitioner LaJuana Destin.[4] Slaughter further testified that he

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[3] Though not indicative of criminal culpability, it may be an indicator of naiveté. Destin had no reason to mistrust or question Slaughter. Furthermore, it is not unusual for letters to cross in the mail or arrive at the wrong destination. Additionally, Destin testified that she did not receive any such letters.

[4] *See* (R.594, ln. 1-5)(where Slaughter admits that he decided on his own that adding a "y" to the end of the name "Destin" made it

initially began the fictitious employer scheme receiving no benefit for himself solely because he wanted to help people (R.656. ln. 1-8). Slaughter had a personal opinion that led to his conduct, whereby he needed not consult people to change any data in order to right the system he thought to be unjust (R.656, ln. 1-8). As a matter of fact, Slaughter, a claims taker, would tell people that he wanted to help them, not that he intended to involve them in an illegal scheme (R.673, ln. 2-10).

Slaughter admits that he engaged in this scheme so frequently that he does not know who he "helped" at this point (R.661, ln. 9-13). Hence, it is clearly reasonable that some people were "helped" by this scheme without even knowing it. Slaughter admits that he is a liar, he entered fictitious information in the TWC computers, he was addicted to gambling, and his memory is faulty (R. 708, ln. 5-9); see also (R.711, ln. 2-4 and 8-18). Slaughter specifically admits that it was of no consequence what information he was given by a claimant because the data he personally input into the system would be reflected in the TWC record, a record that Petitioner had no access to change (R. 686, ln. 8-18). Additionally, the paperwork sent out by

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look more like an employer); *see also* (R.594, ln. 20-22)(where Slaughter thought through the process of insuring that the employer's address was different from the claimant's); *see also* (R. 604, ln. 2-8)(where Slaughter discusses that using his own made up version of Destin's name did not indicate that he necessarily received an ineligible claimant's information from her). *See also* (R. 656, ln. 1-8)(where Slaughter admits he began utilizing this scheme to help people that he subjectively believed needed benefits.

the TWC would not reflect the last employer if that employer fell outside of the base wage earning period, or the first four of the last five months (R.685, ln. 11-18). The Court seemed to place a lot of significance on the fact that Slaughter was Petitioner Destin's claims representative in 1996, when she applied for employment benefits and in 1999 when she applied for employment benefits. However, it should also be noted that Petitioner Destin did not receive employment benefits in 1996 when TWC documents show that it was Slaughter she spoke to. (See Appendix B: Government's Argument on Appeal, P. 38-39). If this indicates anything, it indicates that Petitioner Destin was not involved in a criminal scheme and was not a co-conspirator. It should also be noted that Destin had no criminal history, which should give more credence to her testimony. (PSR 49).

To prove mail fraud under 18 U.S.C. § 1341, the Government must prove (1) a scheme to defraud; (2) the use of the mails to execute the scheme; and (3) the specific intent to defraud. "The government need not prove that the accused used the mails himself or actually intended that the mail be used." United States v. McClelland, 868 F.2d 704, 707 (5th Cir. 1989).

Slaughter readily concedes that he utilized the address and information of people, such as Grace Morgan, without ever helping Grace Morgan receive benefits (R.683, ln. 13-R.684, ln. 10). Slaughter also utilized the name and address of Simon Adams; yet, Slaughter never "helped" Simon Adams receive benefits (R.683, ln. 13-R.684, ln. 10). It is clearly obvious that once Slaughter had contact information,

he could use that information at will to create a fictitious employer, with or without the knowledge or consent of the person whom he used (R.683, ln. 13-R.684, ln. 10); see also (R.689, ln. 2-8). This uncorroborated testimony is simply too insubstantial to resolve beyond a reasonable doubt that Petitioner LaJuana Destin (Steward) knew or should have known of Slaughter's use of her address as a fictitious employer, much less entered into an agreement to defraud the United States or aid and abet in such conduct. As a consequence, Petitioner LaJuana Destin was convicted on insufficient evidence resulting in a manifest miscarriage of justice.

The Fifth Circuit has stated that a conspiracy conviction may be based on the uncorroborated testimony of an alleged co-conspirator may be sufficient when it is not be incredible or otherwise insubstantial on its face. U.S. v. Osum, 943 F.2d 1394, 1405 (5th Cir. 1991). The Federal Rules of Evidence further require the Court to weigh the probative value of the evidence against the "danger of unfair prejudice, confusion of issues or misleading the jury and considerations of undue delay, waste of time, or needless presentation of cumulative evidence. Fed. R. Evid. 403. The Supreme Court has recognized that all accomplice testimony is inherently suspect. Bruton v. United States, 391 U.S. 123, 136 (1968). The Supreme Court has recognized that accomplice testimony must be received with suspicion, and with the very greatest care and caution, and ought not be passed upon. Crawford v. United States, 212 U.S. 183, 204 (1909). We urge this Court to rule that sole uncorroborated witness and/or alleged accomplice testimony should not be admissible for the purpose of sustaining a guilty

verdict, particularly when there is a plea bargain involved, as in the case at hand. "The use of informers, accessories, accomplices, false friends, or any other betrayals which are "dirty business" may raise serious questions of credibility." Lee v. United States, 343 U.S. 747,757 (1952).

CONCLUSION

For these reasons, the petitioner, LAJUANA DESTIN, respectfully prays that this Court grant her application for a Writ of Certiorari.

Respectfully submitted,

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Attorney for Petitioner

Date: February 8, 2008

APPENDIX

APPENDIX A

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 06-20847

[Filed November 13, 2007]

UNITED STATES OF AMERICA, Plaintiff- Appellee,	)
v.	)
LAJUANA DESTIN and DENETRA McELROY, Defendant-Appellants,	)

Appeals from the United States District Court
for the Southern District of Texas
USDC NO. 4:04-CR-582

Before KING, BARKSDALE, and DENNIS, Circuit Judges.

PER CURIAM:*

Defendants-Appellants Lajuana Destin and Denetra McElroy appeal from final judgments of conviction for their participation in a scheme to fraudulently obtain unemployment benefits from the Texas Workforce Commission (TWC). Destin and McElroy challenge their convictions on the ground that the government presented insufficient evidence to support their respective convictions. Finding no error, we AFFIRM.

I. BACKGROUND

On December 29, 2004, Destin, McElroy, and four others — John Slaughter, Jacqueline Ligon, Brenda Bowers, and Shalanda Nichols — were indicted by a grand jury in the Southern District of Texas on forty-four separate counts relating to a scheme to defraud the TWC from November 1996 through August 2001. All of the defendants were charged in Count One with conspiracy to commit mail fraud, in violation of 18 U.S.C. § 371.[1] McElroy, along with Slaughter, was charged in Counts Two through Seven with mail fraud, in violation of 18 U.S.C. § 1341. Destin, along with Slaughter, was charged in Counts

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* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

[1] Slaughter, Bowers, and Nichols each pleaded guilty before trial to Count One of the indictment as part of separate plea agreements with the Government. Ligon remained a fugitive throughout the district court proceedings.

Forty-Two through Forty-Four, also under the mail fraud statute. A bench trial commenced before United States District Judge Melinda Harmon on March 27, 2006. At the close of the government's case, on March 30, 2006, Destin and McElroy moved for a judgment of acquittal, which the district court denied. On April 3, 2006, following the close of both defendants' cases, the district court found McElroy guilty on Counts One through Seven and Destin guilty on Counts One, Forty-Two and Forty-Four.[2] McElroy was sentenced on October 6, 2006 to five years of probation on each of Counts One through Seven, with the sentences to run concurrently. She was ordered to pay restitution in the amount of $20,545. Destin was likewise sentenced on October 6, 2006 to five years of probation on Counts One, Forty-Two, and Forty-Four, with the sentences to run concurrently. She was ordered to pay restitution in the amount of $33,418.

B.

The instant convictions arise from a scheme to defraud the TWC through the disbursement of unemployment benefits to persons who were not qualified to receive them. The TWC is the Texas state agency in charge of administering the federal government's unemployment insurance system, which was created by the Social Security Act of 1935 to provide monetary benefits through the states to

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[2] At the time she announced the verdicts, Judge Harmon dismissed Count Forty-Three as to Destin because it was "just essentially surplusage" in light of the conduct charged in Count Forty-Four.

persons who are unemployed due to no fault of their own. Under this program, state-levied employer taxes, occasionally supplemented by federal funds, finance the benefits paid to unemployed persons in the private sector. In addition, federal grants cover all costs incurred by the relevant state agency in the course of administering the unemployment benefits program so long as the state meets certain statutory and regulatory requirements.

According to a TWC representative who testified at trial, in order to qualify for and receive unemployment benefits from the TWC, a person must satisfy three eligibility criteria. First, the person must have had sufficient earnings during the "base period," which consists of the first four of the last five completed calendar quarters. Second, the person's last employment must have terminated under appropriate circumstances, which include being laid off for a lack of work. If a person was fired or quit her job, then TWC conducts an investigation to determine the person's eligibility under this criterion. Finally, the claimant must be "able to work," "available for work," and "looking for work."

Beginning in late 1996 and continuing through the entire period of time relevant to the Destin and McElroy convictions, persons seeking unemployment benefits were required to visit a TWC office in order to initiate their claims. During that visit, according to the TWC representative, prospective recipients "would be directed to a claims taker who would ask a series of questions . . . to identify the person and next to determine what type of claim for unemployment was needed. And then they would be questioned about who

their last employer was and their reason for separation from that work." The claims-takers then entered this information directly into the TWC computer system, which it referred to as an "online application." The TWC did not require claimants to fill out a paper application, and there was generally no paper record of these visits. After the person submitted the online application for unemployment benefits, the TWC provided the claimant with information on how to use its Tele-Serve system, which was the mechanism by which the TWC disbursed benefits to eligible recipients. Under the Tele-Serve system, payments of unemployment benefits were not automatically generated as a result of the filing of an application, but rather claimants were required to access the Tele-Serve system by phone every two weeks to request payments. While using the Tele-Serve system, a claimant was required to answer a series of "yes or no" questions using a touch-tone phone and then, at the end of the call, to certify that those answers were true and correct. The questions focused on the claimant's ongoing eligibility for receipt of unemployment benefits, including whether the person was able to work, available to work, and looking for work during the relevant two-week period.

The Government contends that Slaughter, with the help of Destin and McElroy, knowingly and illegally manipulated TWC's system for administering unemployment benefits so as to provide ineligible persons with payments from the unemployment insurance program. Slaughter, who began his employ with TWC in 1982, was at all relevant times in this matter a claims-taker for TWC. In that capacity, Slaughter met with prospective unemployment

insurance recipients at a TWC office in Houston and assisted them in filling out and processing their applications for unemployment benefits. He testified that, beginning in about 1996, he learned that he could obtain benefits for persons who were otherwise ineligible through a loophole in the system known as the "one-day rule." In other words, if a person had been fired from or quit her last job, she could not receive unemployment benefits; however, if that person then went to work for any entity for one day, and did not quit or get fired, she would be eligible for unemployment benefits. To exploit this loophole, Slaughter would input a fictitious employer as the claimant's employer for one day, thereby making the claimant eligible to receive benefits. Slaughter testified that he started this scheme because "there was [sic] a lot of people that were not receiving their benefits who I knew could get their benefits through a loophole . . . ." He further testified that applicants would complain to him that they were entitled to receive benefits from the program because they had paid money into the unemployment insurance system, even though their beliefs were inaccurate. Slaughter initially aided claimants in obtaining benefits through this loophole for free because he "wanted to help people get their benefits. Simple as that." Eventually, however, Slaughter testified that he began to receive gifts in exchange for his manipulation of the system through the one-day loophole and the use of fictitious employers. Over the course of the approximately five-year period during which Slaughter perpetrated his fraudulent scheme to obtain unemployment benefits, he filed at least one hundred to two hundred false claims in the TWC's system. To carry out his scheme, he used about fifty to one hundred fictitious

employer names. Ultimately, Slaughter improperly obtained more than $500,000 in unemployment benefits from TWC. It was TWC's usual business practice to disburse unemployment benefits checks through the United States mail.

C.

The defendants' involvement in the alleged scheme began in the mid-1990s. At trial, witnesses testified about their respective participation as follows.

1. Denetra McElroy

According to Slaughter, he first met McElroy at a bingo hall at some time between 1994 and 1996. On December 29, 1996, he helped McElroy fill out a claim for unemployment benefits. In that claim, he listed Grace Morgan as McElroy's most recent employer, even though Morgan was not McElroy's employer but was simply a woman that he knew. Slaughter also helped McElroy fill out claims for unemployment benefits in 1999 and 2000. In those claims, he listed Simon Adams as McElroy's most recent employer, even though Adams was not McElroy's employer but was simply a man that he knew. McElroy received benefits from her 1996, 1999, and 2000 claims as a result of the fictitious employer information.

Additionally, during this time period, Slaughter testified that he would meet McElroy at bingo halls to discuss unemployment claims that she wanted him to file on behalf of other persons. On these occasions, McElroy provided Slaughter with a piece of paper that listed the names, addresses, and personal information

of the persons for whom she asked him to file claims, as well as $100 in cash for each claim that he filed. According to Slaughter, McElroy expressed to him that she knew these claimants were otherwise ineligible to receive benefits. This occurred approximately three or four times over the course of three years.

One of the claimants who McElroy purportedly arranged to improperly receive benefits with Slaughter's help was Yvette Jones. She testified that she was a distant relative of McElroy and lived on the same street as McElroy, about six or seven houses away. In the spring of 1999, Jones was fired from her position with Prudential Insurance for excessive health-related absences. Shortly thereafter, Jones ran into McElroy in their neighborhood and explained to McElroy that she had been terminated from her job at Prudential. During that conversation, McElroy urged Jones to file for unemployment benefits. Jones then proceeded to file a claim with TWC, which was denied. Some time later, Jones informed McElroy that her claim for benefits had been denied. McElroy then told Jones that she knew someone at TWC who could help Jones, but that it would cost $200. Jones subsequently filled out a new application, which her father gave to McElroy along with $200. A few days later, McElroy told Jones that she would begin to receive unemployment benefits, which did in fact occur. Throughout this time, Jones testified that she never spoke with anyone at TWC about her benefits, including Slaughter; she only spoke with McElroy. In late December 1999, Jones ceased receiving benefits from TWC. At about that time, McElroy asked Jones if she was still receiving benefits, to which Jones responded that she was not. McElroy then told Jones

that she would check with someone at TWC to see if she had any more money in her account. Jones eventually gave McElroy another benefits application to fill out. Jones began to receive unemployment benefits again in mid-2000. Jones stated that McElroy was the only person to whom Jones spoke about unemployment benefits after she was initially denied benefits by TWC. Even though he had never met or spoken with Jones, Slaughter testified that he was the one who had manipulated the system to allow Jones to improperly obtain benefits. Although he could not recall whether McElroy asked him to file a claim on behalf of Jones, he confirmed that he had filled out a claim for Jones so that she could receive unemployment benefits after previously being denied by TWC on the basis that she was unable to work. That claim listed Jones's address as 4706 Knotty Oaks Trail, which was close to McElroy's address at the time, 4606 Knotty Oaks Trail. Slaughter was certain that someone had asked him to help obtain benefits for Jones.

With regard to another claim, Slaughter testified that he used McElroy's name and address as a fictitious employer to fraudulently obtain benefits for Roy Gaines in 1999. Slaughter had never met or spoken with Gaines before he filed a claim on his behalf. Instead, he testified that "[McElroy] would have contacted me and gave [sic] me the information to file it." After Slaughter inputted Gaines' data into the TWC system, TWC sent a letter to McElroy's home address because she was listed as Gaines' most recent employer. Slaughter told McElroy to throw away any TWC correspondence that was mailed to her address.

After the Government rested, McElroy testified that, at some time in 1996 after she was terminated from her job with a manufacturing company, she approached Slaughter at a bingo hall because she recognized him from a previous visit she had made to a TWC office. McElroy explained to Slaughter that she believed that she had been unfairly terminated from her job. At that point, according to McElroy, Slaughter informed her that there is an exception to the general rule that persons who are terminated from their most recent employer are ineligible to receive unemployment benefits. The exception is for situations in which a supervisor is aware a person has to leave a job shift for medical reasons. McElroy then proceeded to visit Slaughter at his TWC office where she filled out a claim with his help. She testified that during that visit he told her that she was eligible to receive benefits and that he did not inform her that he was using a fictitious employer as part of her claim. She testified that she did not know Grace Morgan. In 1999, she returned to the TWC office to submit another claim for benefits. She personally requested that Slaughter be assigned to help her with her new claim. She stated that she believed she was eligible to receive benefits at that time.

Regarding her name being used as an employer on certain claims processed by Slaughter, she testified that she and Slaughter never discussed her name being used as someone else's employer. When she received correspondence in the mail from TWC, she testified that she immediately called TWC to speak with Slaughter. He told her that it was a "mistake" and that she should not open it. McElroy denied receiving more than one letter from TWC, even though

TWC records indicated that she had been sent five letters concerning claims in which she had been listed as the employer.

McElroy admitted that she brought Jones an application to fill out, and that she returned it to Slaughter on Jones' behalf, along with $200. She believed the $200 was payment for Slaughter helping out Jones appeal the initial denial of benefits "on his off time." She denied keeping any of that money for herself. She described her conduct as "maybe inappropriate or unethical," but not illegal.

As to Gaines' claim, McElroy testified that she provided him with Slaughter's contact information at TWC. She referred Gaines to Slaughter for help with a "job search project," not to make a claim for benefits. McElroy testified that she was unaware Gaines began receiving unemployment benefits from TWC until one day when she was in a car with Gaines and he asked her to cash a $277 benefits check for him. She endorsed the check, writing "Roy Gaines, Pay to the Order of Denetra McElroy," and cashed it. She stated that she immediately gave the $277 to Gaines.

Gaines corroborated McElroy's testimony that she had provided him with Slaughter's telephone number for help with his employment search. Gaines spoke with Slaughter on the telephone and provided him with certain personal information, but they did not discuss applying for employment benefits. He then went down to the TWC office to drop off some forms related to his job search, but did not meet with or speak with Slaughter. Gaines testified that he was surprised when, about a month later, he began to

receive unemployment checks from TWC. He asked McElroy, who was his ex-girlfriend, to cash one of these unemployment checks because he had lost his wallet and did not have a bank account at the time. Gaines denied ever discussing with McElroy his receipt of unemployment benefits.

Ultimately, TWC paid McElroy in the following amounts: a weekly benefit of $262 from January 21, 1997 through May 7, 1997; a weekly benefit of $203 from April 19, 1999 through July 21, 1999; and a weekly benefit of $200 from April 17, 2000 through May 22, 2000. TWC paid Jones a weekly benefit of $227 for a total of $2,489 in 2000. TWC paid Gaines a total of $4,730 in benefits in 1999.

2. Lajuana Destin

Like McElroy, Slaughter testified that he first met Destin in the mid-1990s. He filed false claims on her behalf using fictitious employers in 1996 and 1999. As part of the 1999 claim, Slaughter used the fictitious employer "Destiny" to help Destin obtain benefits for which she was otherwise ineligible because she had resigned from her most recent employ. Slaughter believed that he added the "y" to the end of Destin's name because "it made it look more like an employer." Slaughter inputted a P.O. Box address for Destiny, the fictitious employer, that he was certain was provided to him by Destin. He stated that there was no question in his mind that Destin knew he was filing a false claim on her behalf because she gave him the P.O. Box address that he used as her last employer's address. Slaughter told her to throw away any

correspondence she received from TWC at that address.

Slaughter also used the name "Destiny" and the same P.O. Box address as a fictitious employer to help Floyd McClain and Randall Jordan obtain unemployment benefits. McLain had worked for the Texas Department of Criminal Justice, but had quit voluntarily in March 1999. He thereafter attempted to obtain benefits through TWC's Tele-Serve system, but he was deemed ineligible to receive benefits because he had voluntarily quit his last job. On July 23, 1999, Slaughter, who had never met with or spoken to McClain and was not the original claims-taker on this file, went into the system and changed McClain's ineligibility status so that he could begin receiving payments. Slaughter stated that "someone would have prompted me to file a claim so that he may receive his benefits." Although he could not precisely recall who provided him with the necessary information to make the changes to McClain's claim, he said it was "more than likely I got it from [Destin]" because he used Destiny as the employer name and the P.O. Box that was assigned to Destin as his employer address. TWC records also indicate that Slaughter input a claim for Jordan, who reported having worked only for one day for Destiny, his most recent employer. When Slaughter used Destin's P.O. Box address to make a false claim, he would notify her in advance and instruct her to throw away any correspondence she received from TWC at that address. According to Slaughter, Destin paid him on two or three occasions to file false claims.

After the Government rested, Destin testified that she first applied for unemployment benefits in 1996. She could not recall with whom she spoke when she visited the TWC office. In 1999, after she lost her job with a company called Imperial Holly, she again applied for unemployment benefits. She testified that when she went to apply at the TWC office, Slaughter was randomly assigned to take her claim. She then provided him with information that he input into the computer. She stated that she did not pay Slaughter $100 to help her apply for benefits. She also testified that she knew McClain, but did not know that he had filed for unemployment benefits.

On cross examination, Destin testified that she never received any correspondence from TWC regarding her being listed as an employer on other claims. She first testified that she received her unemployment benefit checks at her post office box, but then acknowledged that TWC records show that her checks were sent to her home address. Destin confirmed that in June 1999 she was instructed by the Tele-Serve system to contact TWC because of her enrollment in school at the time, which was a potential disqualification to her receiving unemployment benefits. Destin had filed her claim with Slaughter in March 1999, but her status as a student, which she had been since January of that year, was not an impediment to her eligibility to receive benefits until several months later when she notified the Tele-Serve system that she was a student. She could not recall subsequently contacting either Slaughter or someone else at TWC to discuss her school situation, nor could she recall being notified that she was still eligible to receive benefits about a week later.

Ultimately, TWC paid Destin a weekly benefit of $287 from March 27, 1999 through September 18, 1999, for a total of $7,317. TWC paid McClain a weekly benefit of $273 from July 24, 1999 through December 4, 1999, for a total of $5,469. TWC paid Jordan a weekly benefit of about $222 from January 18, 2000 through February 14, 2000, for a total of $889.

II. STANDARD OF REVIEW

Destin and McElroy argue that the evidence was insufficient to support their respective convictions. Both defendants moved for a judgment of acquittal only at the close of the Government's case-in-chief, even though both defendants presented evidence and the Government put forth rebuttal evidence. Nevertheless, we have stated that "[w]hen a jury trial has been waived and a bench trial held we must determine whether [the] findings are supported by any substantial evidence." *United States v. Rosas-Fuentes*, 970 F.2d 1379, 1381 (5th Cir. 1992) (internal quotations omitted) (noting that defendant's failure to renew his motion for acquittal at close of all evidence in bench trial does not waive sufficiency review on appeal); *see also United States v. Ceballos-Torres*, 218 F.3d 409, 411 n.3 (5th Cir. 2000) (same). Evidence is sufficient to sustain a conviction if any rational trier of fact could have found that the evidence established guilt beyond a reasonable doubt. *See Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *United States v. Serna-Villarreal*, 352 F.3d 225, 234 (5th Cir. 2003). In conducting this inquiry, we examine the evidence as a whole and construe it in the light most favorable to the verdict. Id. "It is not [our] function to make credibility

choices or to pass upon the weight of the evidence." *Rosas-Fuentes*, 970 F.2d at 1381 (quoting *United States v. Jennings*, 726 F.2d 189, 190 (5th Cir. 1984)).

III. DISCUSSION

A. Conspiracy

McElroy and Destin argue that the evidence is insufficient to support their convictions for conspiracy to commit mail fraud. To prove conspiracy to commit mail fraud under 18 U.S.C. § 371, the Government must establish "(1) an agreement between appellants and others (2) to commit the crime of mail fraud, and (3) an overt act committed by one of the conspirators in furtherance of that agreement." *United States v. Sneed*, 63 F.3d 381, 385 (5th Cir. 1995). Additionally, the Government must show that the defendant acted with intent to defraud. *United States v. Garza*, 429 F.3d 165, 168-69 (5th Cir. 2005). To prove mail fraud under 18 U.S.C. § 1341, the Government must prove "(1) a scheme to defraud; (2) the use of the mails to execute the scheme; and (3) the specific intent to defraud." *United States v. Holmes*, 406 F.3d 337, 353 (5th Cir. 2005) (quoting *United States v. Bieganowski*, 313 F.3d 264, 275 (5th Cir. 2002)). "The Government need not rely on direct evidence of a conspiracy; each element may be proven by circumstantial evidence." *Id.* at 351 (quoting *United States v. Mulderig*, 120 F.3d 534, 547 (5th Cir. 1997)). We find the evidence adduced at trial sufficient to support conspiracy convictions for both defendants.

1. Denetra McElroy

The evidence shows that, beginning in 1996, Slaughter and McElroy agreed to a scheme to defraud the TWC that had as its genesis Slaughter's ability to manipulate a loophole in the unemployment benefits system using fictitious employers such that persons otherwise ineligible to receive benefits could do so. According to Slaughter's testimony, which the district court considered credible, he met McElroy at bingo halls at various times between 1996 and 2001 to discuss unemployment claims that she wanted him to file on behalf of other persons. *See Burton v. United States*, 237 F.3d 490, 498 (5th Cir. 2000) ("A guilty verdict may be sustained even if supported only by the uncorroborated testimony of a co-conspirator, and even if the witness is interested due to a plea bargain, unless the testimony is incredible on its face."). She provided him with the name, address, and Social Security number of these persons, so that he could enter an unemployment claim. McElroy also paid Slaughter $100 per claim that she wanted him to file. Slaughter testified that McElroy knew when she provided this information to him that these persons were otherwise ineligible to receive benefits. As part of the scheme, McElroy arranged for Yvette Jones to receive benefits through Slaughter's assistance even though Jones never spoke with Slaughter or anyone else at TWC about her application. Jones testified that McElroy asked for and received $200 from Jones as part of this transaction.

Viewed in a light most favorable to the Government, the evidence established that Slaughter and McElroy agreed to participate in a scheme that

had as its objective the fraudulent disbursement of TWC funds. McElroy furthered the conspiracy by providing Slaughter with personal information, as well as cash, from persons who sought to obtain, and eventually did obtain, employment benefit checks that were sent through the mail.

2. Lajuana Destin

The evidence likewise shows that Destin conspired with Slaughter to obtain unemployment benefits for herself and others through the loophole in the TWC system that Slaughter was able to exploit. Slaughter testified that there was no doubt in his mind that Destin knew that he filed a fraudulent claim on her behalf in 1999 because she provided him with the post office box address that he used as her last employer's address. TWC records show that Destin received her unemployment benefit checks at a different address. Destin had difficulty explaining how or why Slaughter would have been able to input both addresses in relation to her 1999 claim if she had not provided him with both addresses. Further, when TWC informed Destin later in 1999 that she may be ineligible to receive further benefits because of her student status, the evidence showed that Slaughter went into the TWC system and made a change to her file so that she could continue to receive unemployment benefits. Although Destin could not recall who she spoke with at TWC at that time concerning her potential ineligibility, she acknowledged that she had been instructed to contact TWC. Finally, Slaughter testified that he helped Floyd McClain, an acquaintance of Destin's, obtain unemployment benefits even though he had never met with or spoken with McClain and

was not the original claims-taker on McClain's file. Slaughter testified that it was more than likely that Destin contacted him regarding McClain's claim because he used Destiny as the fictitious employer name and Destin's post office box as the employer address so that McClain could begin to receive benefits. McClain was otherwise ineligible to receive benefits.

Thus, viewed in a light most favorable to the Government, the evidence establishes that Slaughter and Destin agreed to pursue their scheme to obtain fraudulent benefits and that both Destin and Slaughter committed overt acts in furtherance of the conspiracy. The result of these acts was the disbursement of TWC unemployment benefits through the mail to persons who were ineligible to receive these benefits.

B. Mail Fraud

As discussed above, to prove mail fraud under 18 U.S.C. § 1341, the Government must prove (1) a scheme to defraud; (2) the use of the mails to execute the scheme; and (3) the specific intent to defraud. "The government need not prove that the accused used the mails himself or actually intended that the mail be used." *United States v. McClelland*, 868 F.2d 704, 707 (5th Cir. 1989). Rather, "[t]he mail fraud statute requires only that the mailing caused by the defendant's actions be 'incident to an essential part of the scheme.'" *United States v. Ingles*, 445 F.3d 830, 835 (5th Cir. 2006) (quoting *United States v. Green*, 494 F.2d 820, 824 (5th Cir. 1974)). "To cause a mailing, a defendant must act with knowledge that the

use of the mails will follow in the ordinary course of business, or where such use can reasonably be foreseen, even though the use of the mails was not actually intended." *United States v. Duncan*, 919 F.2d 981, 991 (5th Cir. 1990) (internal quotations omitted).

1. Denetra McElroy

The evidence is sufficient to support McElroy's mail fraud convictions. Counts Two through Seven charge McElroy and Slaughter with executing a scheme to defraud the TWC that resulted in six unemployment benefits checks being sent through the mail to Yvette Jones. As detailed above, McElroy encouraged Jones to file for unemployment benefits in the spring of 1999. Jones testified that, after Jones' application was initially denied, McElroy informed her that she knew someone at TWC who could help Jones. McElroy provided Jones with a new application and told Jones that it would cost $200, which Jones' father gave to McElroy. Soon thereafter, Jones began receiving unemployment benefits checks even though she had not personally met with or spoken with anyone at TWC after her initial claim had been denied. In late 1999, Jones ceased receiving benefits from TWC. Jones testified that, when McElroy learned of this development, she told Jones that she would check with someone at TWC to see if Jones had any more money in her benefits account. McElroy then provided Jones with a new application to fill out. Jones once again began receiving unemployment benefits checks in mid-2000, even though she had not personally communicated with anyone at TWC. Slaughter confirmed that someone had asked him to help obtain benefits for Jones and that he had never met or spoken

with Jones. Slaughter also testified that he was the person who manipulated the system to allow Jones to improperly obtain benefits. Finally, evidence presented at trial showed that Jones received six checks from TWC during June, July, and August 2000, all of which came through the United States mails.

Thus, there is sufficient evidence to show that McElroy knowingly engaged in a scheme to defraud TWC by exploiting a loophole in TWC's benefits system and thereby causing unemployment benefits checks to be mailed to a person who was otherwise ineligible to receive them.

2. Lajuana Destin

There is also sufficient evidence to sustain Destin's mail fraud convictions. on Counts Forty-Two and Forty-Four. The evidence showed that Destin knowingly participated in a scheme to defraud the TWC for the purpose of obtaining unemployment benefits for herself and others who were otherwise ineligible. Destin provided false information, including fictitious employer addresses, so that Slaughter could exploit a loophole in TWC's system. According to Slaughter, Destin paid him on two or three occasions to file false claims. This scheme resulted in claimants fraudulently obtaining unemployment benefits checks through the United States mail. Specific to Counts Forty-Two and Forty-Four, the evidence shows that Slaughter inputted Randall Jordan's claim for unemployment benefits. As part of that claim, Jordan reported having worked most recently for only one day for the fictitious employer Destiny, whose address was listed as Destin's post office box. Jordan ultimately

received benefits checks through the mails on January 29, 2000 and February 12, 2000.

IV. CONCLUSION

For the foregoing reasons, we AFFIRM Denetra McElroy's and Lajuana Destin's convictions.

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

D.C. Docket No. 4:04-CR-582-6

[Filed November 13, 2007]

UNITED STATES OF AMERICA	)
Plaintiff - Appellee	)
	)
v.	)
	)
LAJUANA DESTIN	)
Defendant - Appellant	)
	)

Appeal from the United States District Court
for the Southern District of Texas, Houston.

Before KING, BARKSDALE, and DENNIS, Circuit Judges.

J U D G M E N T

This cause was considered on the record on appeal and the briefs on file.

It is ordered and adjudged that the judgment of the District Court is affirmed.

ISSUED AS MANDATE: DEC 05 2007

A True Copy
Attest

Clerk, U.S. Court of Appeals, Fifth Circuit

By:/s/_____

Deputy **DEC 05 2007**

New Orleans, Louisiana

APPENDIX B

United States District Court
Southern District of Texas
Holding Session in Houston

Case Number 4:04CR00582-006
USM NUMBER: 39097-179

[Filed October 6, 2006]

United States of America)
v.)
LAJUANA DESTIN)

JUDGMENT IN A CRIMINAL CASE

CASE NUMBER: **4:04CR00582-006**
USM NUMBER: 39097-179

Eric Davis
Defendant's Attorney

THE DEFENDANT:

☒ was found guilty on count(s) after a plea of not guilty. 1, 42, and 44 on April 3, 2006

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 U.S.C. § 371	Conspiracy to commit mail fraud	08/13/2001	1
18 U.S.C. § 1341 and 2	Mail fraud, aiding and abetting	01/29/2000	42
18 U.S.C. § 1341 and 2	Mail fraud, aiding and abetting	02/12/2000	44

The defendant is sentenced as provided in pages 2 through 5 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☒ Count(s) remaining ☒ is dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

October 6, 2006

Date of Imposition of Judgment

/s/

Signature of Judge

MELINDA HARMON
UNITED STATES DISTRICT JUDGE
Name and Title of Judge

October 17, 2006
Date

* * *

PROBATION

The defendant is hereby sentenced to probation for a term of: 5 years.

This term consists of FIVE (5) YEARS as to each of Counts 1, 42, and 44, to run concurrently, for a total of FIVE (5) YEARS.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of placement on probation and at least two periodic drug tests thereafter, as determined by the court. *(for offenses committed on or after September 13, 1994)*

☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)

☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of probation that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

☒ See Special Conditions of Supervision.

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;

2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;

3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;

4) the defendant shall support his or her dependents and meet other family responsibilities;

5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;

6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;

7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;

8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;

9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;

10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;

11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;

12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and

13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

* * *

SPECIAL CONDITIONS OF SUPERVISION

The defendant is required to provide the probation officer access to any requested financial information. If a fine or restitution amount has been imposed, the defendant is prohibited from incurring new credit charges or opening additional lines of credit without approval of the probation officer, unless the defendant is in compliance with the fine or restitution payment schedule.

The defendant is restricted to her place of residence continuously, except for absences authorized by the probation officer, for a period of FIVE (5) MONTHS beginning within 30 days of this Judgment Order or at a time determined by the probation officer. The

probation officer may approve absences for gainful employment, religious services, medical care, education or training programs, and at other times as may be specifically authorized by the probation officer. Electronic monitoring may be used to monitor compliance with this condition; however, alternative means of surveillance may be used that will ensure compliance with this special condition. If electronic monitoring is used, the defendant will incur costs associated with such monitoring, based on ability to pay as determined by the probation officer.

The defendant is prohibited from possessing a credit access device, such as a credit card, unless first authorized by the probation officer.

* * *

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	Assessment	Fine	Restitution
TOTALS	$300		$33,418

A $100 special assessment is ordered as to each of Counts 1, 42, and 44, for a total of $300.

☒ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned

payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal payees must be paid before the United States is paid.

Name of Payee	Total Loss*	Restitution Ordered	Priority or Percentage
Texas Workforce Commission		$33,418	
TOTALS	$ 0.00	$ 33,418.00	

☒ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

* * *

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

A ☒ Lump sum payment of $ 5,300 due immediately, balance due
☒ in accordance with ☒ F below;

F ☒ Special instructions regarding the payment of criminal monetary penalties:

Any balance remaining shall be due in equal monthly installments of $500 to commence 30 days after the date of the judgment. Make all payments payable to: U.S. District Clerk, Attn: Finance, P.O. Box 61010, Houston, TX 77208.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☒ Joint and Several

Case Number Defendant and Co-Defendant Names (including defendant number)	**Total Amount**	**Joint and Several Amount**
4:04CR00582-001 John Slaughter	$939,903	$33,418
4:04CR00582-006 Lajuana Destin	$ 33,418	$33,418

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

APPENDIX C

U.S. District Court
SOUTHERN DISTRICT OF TEXAS (Houston)
CRIMINAL DOCKET FOR CASE #:
4:04-cr-00582-6

[February 6, 2008]

Case title: USA v. Slaughter et al

Date Filed: 12/29/2004
Date Terminated: 10/17/2006

* * *

Date Filed	#	Docket Text

* * *

04/03/2006	145	Minute Entry for proceedings held before Judge Melinda Harmon :6th Day of BENCH TRIAL as to Denetra McElroy, Lajuana Destin held on 4/3/2006. Court Verdict. Denetra McElroy (2) Guilty on charges 1, 2, 3, 4, 5, 6, & 7. Lajuana Destin (6) Guilty on charges 1, 42, & 44. Order for PSR and Sentencing executed on the record. Sentencing set 07/07/06 at

		10:00 a.m. Parties ORDERED to withdraw exhibits. Defts to remain on bond, as stated on the record. Appearances: Ronald C Green, Cedric LaRue Joubert, Robert Nino.(Court Reporter: Ed Reed) Deft continued on Bond, filed.(htippen,)(Entered: 04/03/2006)

* * *

10/06/2006	244	Minute Entry for proceedings held before Judge Melinda Harmon: Deft Present. Sentencing held on 10/6/2006 for Lajuana Destin (6), Count(s) 1, 42-44, 5 years probation as to each count to run concurrent - 5 years total. Restitution of $33,418.00 payable to Texas Workforce Commission. Special Assessment of $300.00. Appearances: Eric J Davis, Cedric LaRue Joubert. (Court Reporter: S Neisser) (kmurphy,) (Entered: 10/06/2006)

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